



COUNCILMEMBER DONNA FRYE

City of San Diego
Sixth District

MEMORANDUM

DATE: February 14, 2005
TO: Michael Aguirre, City Attorney
FROM: Councilmember Donna Frye
SUBJECT: Budget Policy Issues

The Council is in the process of examining the budget "policy" in advance of this year's budget activity.

I have several specific questions regarding possible Council action in this budget cycle regarding payment of the annual pension contribution.

In years past, the Retirement System has been underfunded by using funding plans now known as "Corridor Funding" "Manager's Proposal I" and "Manager's Proposal II". Recently, the City settled the Gleason-Wood case incorporating, again, a multi-year underfunding plan. That settlement was incorporated in the passage of Proposition G approved by the voters last November. There was, to my knowledge, no legal analysis about whether or how this new underfunding plan is any different, or any more legal, than the others that have so badly failed in the past. I am not clear as to whether that issue was even addressed by the Gleason-Wood court ruling.

My questions are as follows:

1. Is it legal under California law to allow these underfunding plans under any circumstance, specifically if they are "part of a settlement"? If so, what specific legal safe harbor exists and what disclosures, if any, must be made about the financial impact of these plans? If not, what is the legal requirement for the annual pension contribution by the City?
2. Given the massive pension deficit, is it legally more preferable to pay this upcoming year's actuarially required contribution (ARC) in full without paying any of the deficit, or better to partially pay this year's ARC and partially pay some of the deficit?
3. May the City Council compel the Retirement System's actuary to provide us with ARC numbers incorporating all System liabilities? (I understand they previously did not include the "contingent" Corbett, 13th check, star cola, etc. obligations in their calculations, and did not reflect retiree health care benefits.) If the City is responsible for these benefits, and possibly

liable for not funding them annually, can we not insist on the actuary incorporating these liabilities into his ARC calculations?

4. When will you legally advise the Council of your opinion on whether retiree health care benefits are "vested" with respect to:

- a. Current retirees
- b. Current employees (both unrepresented, managerial, at-will and represented)
- c. Future hires

Because these issues are so central to the budget decisions facing the City, I would appreciate very precise answers to these questions in a public opinion from your office as soon as possible.

Thank you for your attention to these matters. Your timely response is greatly appreciated.

cc: Honorable Mayor and City Councilmembers
P. Lamont Ewell, City Manager
Michael Aguirre, City Attorney
Honorable Members of the SDCERS Board of Trustees
KPMG

DF/ks